IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.03.2006

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THE HONOURABLE MR.JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE J. A. K. SAMPATHKUMAR

Criminal Appeal No.1071 of 2003

Babu @ Kumaravel .. Appellant/Accused

vs.

State by the Inspector of Police
R.5 New Washermenpet P.S.
Chennai. .. Respondent/Respondent

This criminal appeal is preferred under Sec.374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.2, Chennai in S.C.No.52 of 2000 dated 16.12.2002.

For Appellant : Mr. A. Abdul Lathif

For Respondent : Mr. V.M.R. Rajendran
Additional Public Prosecutor

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JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.,)

One Babu @ Kumaravel, sole accused in Sessions Case No.52 of 2000 on the file of Additional Sessions Judge (Fast Track Court No.2), Chennai, is the appellant in the above appeal. He was charged for an offence punishable under Section 302 IPC and by the impugned judgement, the Additional Sessions Judge, after accepting the case of prosecution, convicted and sentenced him to undergo imprisonment for life (2 counts) and fine of Rs.5,000/-, in default, 6 months rigourous imprisonment.

2. The case of the prosecution is briefly stated hereunder:

(a) Accused is the husband of the deceased Tamilarasi (D-1) and son-in-law of the deceased Manonmani (D2). The marriage between the accused and the Tamilarasi was performed in the year 1991. From the date of their marriage, the accused, who is a drunkard used to demand money from his wife (D1) to consume arrack. On the date of occurrence, viz., 22.09.1999, there was a wordy quarrel and the accused demanded her Thali in order to secure money to consume arrack; since she refused to part with it, he challenged that he would take away her life as well as her mother Manonmani (D2).

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(b) On the same day at about 10.30 p.m. the accused returned to house with Petrol can and poured the same on D1 and D2, who were sleeping inside the house, and thereafter, he set them on fire.

(c) On hearing the noise of the deceased, PW.1, brother of D1 came to the spot and brought them (D1 and D2) to Kilpauk Government Medical College Hospital, Chennai. PW.18, Dr. Mahiza Been admitted them and gave treatment. PW.18 also recorded the statement of D1.

(d) On information, PW.23 Sub-Inspector of Police, H.5 Washermenpet Police Station went to Kilpauk Government Medical College Hospital, Chennai and recorded the statement of Manonmani (D2) and registered a case against the accused under Section 307 IPC in Crime No.691 of 1999.

(e) On receipt of FIR, PW.24, Inspector of Police went to the scene of occurrence, prepared observation mahazar, Ex.P.26 and rough sketch Ex.P.27. PW.24 received intimation Ex.P.29 Express report that on 23.09.1999 at 5.45 a.m. the deceased Manonmani (D2) died, and altered the case into one under Section 302 IPC. He also made a requisition Ex.P.4 to PW.12 Judicial Magistrate for recording the dying declaration of Tamilarasi. PW.12, after complying with all the formalities, recorded the dying declaration of Tamilarasi (D1) in Ex.P.5.

(f) PW.23, Sub-Inspector of Police, conducted inquest on the dead body of Manonmani (D2) and sent the same for post mortem. He arrested the accused on 23.09.1999 at 4.30 p.m. and also recovered Material Objects. PW.22 Dr. Manokaran, conducted post mortem on the dead body of Manonmani (D2) and issued post mortem certificate, Ex.P.23.

(g) On 2.10.1999 at 2.00 p.m. Tamilarasi (D1) died and PW.23, Inspector of Police conducted inquest and sent the dead body for post mortem. PW.22 Dr. Manokaran conducted post mortem on the dead body of Tamilarasi and issued post mortem certificate, Ex.P.22. PW.23 gave a requisition, Ex.P.34 to 15th Metropolitan Magistrate, Chennai for sending the Material Objects to Forensic Science Laboratory.

(h) After examining all the witnesses, PW.23, Inspector of Police, filed a charge sheet on 18.11.1999 under Sections 302 and 449 IPC.

3. When the accused was questioned under Section 313 Cr.P.C. with reference to the incriminating circumstances found against him in the evidence of prosecution witnesses, he denied the same. Accused has not examined any witness on his side.

4. The prosecution has examined 24 witnesses, marked 35 Exhibits and produced 14 Material Objects. The Additional Sessions Judge, accepting the prosecution case, arrived at the conclusion that it was the accused, who committed the offence of double murder, found him guilty under Section 302 IPC (2 counts) and convicted and sentenced him to undergo imprisonment for life; hence, the present appeal.

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5. Heard Mr. A. Abdul Lathif, learned counsel for the appellant and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for the respondent.

6. The only point for consideration in this appeal is, whether the prosecution has established the guilt of the accused beyond reasonable doubts and the Additional Sessions Judge (Fast Track Court No.2), Chennai is right in convicting and sentencing the accused to undergo life imprisonment?

7. According to the prosecution, the accused is a drunkard not having regular income; hence he used to demand money from his wife D1 for consumption of arrack. It is their further case that on the date of occurrence, viz., on 22.09.1999, initially the accused demanded money from his wife D1, and since she refused, he demanded her thali, which was also not obliged by the wife, due to which he warned his wife and her mother that he would take away their life. It is stated that at 10.30 p.m. on 22.09.1999, the accused entered the house with petrol can and poured the petrol on his wife and her mother and threw a lighted match stick on them and ran away.

8. Though prosecution has examined PW.1, brother of the deceased, PW.2, a neighbour in support of its case, they turned hostile. Even then, as rightly pointed out by the learned Additional Public Prosecutor, the statement of hostile witnesses are relevant atleast to certain extent. In the case on hand, though PW.1 narrated the entire incident before the police under Section 161 Cr.P.C., before the Court he has not supported the case of prosecution. However, he admitted in the Court that the deceased Tamilarasi (D1) is his sister and the accused Babu @ Kumaravel, is her husband. He also admitted that they had two children out of the wedlock, viz., Saravanan and Priyanka. He further deposed that his mother Manonmani (D2) and her sister (D1) died due to burn injuries in a fire accident that took place at 10.30 p.m. on 22.09.1999. To this extent, he supports the prosecution case. However he does not support the case of prosecution in so far as the involvement of the accused in the manner as claimed by the prosecution.

9. The other witness, PW.2, a neighbour, who also turned hostile has stated that he is working as Supervisor in a Private Company and he knows PW.1. He also said that the deceased Manonmani (D2), is the mother of PW.1. He also referred that Manonmani (D2) and Tamilarasi (D1) died in a fire accident. However, he did not mention anything about the accused.

10. As rightly pointed out, though Pws.1 and 2 turned hostile, it is clear from their evidence that they know that both Manonmani (D2) and Tamilarasi (D1) died due to fire accident that took place at 10.30 p.m. on 22.09.1999.

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11. One Nedunchezhiyan, working in Sami Service Station and Petrol Bunk was examined as PW.3 to show that it was the accused who came at 5 p.m. on 22.09.1999 to purchase petrol in a can. Though he admitted that he sold petrol to the accused, when the accused was shown to him, he was not in a position to identify him. However, according to him, latter he came to know that it was the accused.

12. PW.4, who aged about 9 years is the son of the accused and the deceased Tamilarasi (D1). His evidence was recorded after satisfaction that he is able to understand the questions. Though he deposed that his mother (D1) and grand mother (D2) died due to fire accident, he did not support the case of prosecution.

13. PW.7, who is a helper doing the work of gas cutting, though turned hostile, admitted that it was he who attested the confession statement of the accused, Ex.P.1.

14. PW.10, is owner of the house in which the accused and the deceased (D1) were living together. According to her, she was informed by the deceased Tamilarasi (D1) that her husband was not giving money for their day-to-day expenses and it was difficult for her to conduct life, and D1 vacated the house prior to the incident.

15. Though all the above referred witnesses are not fully supporting the case of prosecution, as rightly pointed out by the learned Additional Public Prosecutor, it is clear from their evidence that both the deceased died due to fire accident and D1 and her husband were in a strained relationship due to frequent quarrel. It is the case of the prosecution that due to the burn injuries, both D1 and D2 were taken to KMC Hospital for treatment. P.W-18, the duty doctor has stated that at about 11.50 p.m. on 22.9.1999, when he was on duty in the Emergency Ward, KMC Hospital, one Manorama @ Manonmani (D2) was brought by one Ravi, P.W.6. In his evidence P.W.18 has stated that since she was conscious at that time, he enquired about the incident. According to him, she had stated that around 11.00 p.m. her son-in-law/accused poured petrol and set on fire. P.W.18 noted the injuries and issued the accident register extract, Ex.P-18. He also deposed that at the same time, one Tamilarasi (D1) was also brought by P.W.6 for treatment. P.W.18 has further stated that since D1 was also conscious, he enquired and D1 had stated that at about 11.00 p.m. her husband poured petrol and threw a lighted match stick on her. P.W.18 noted the burn injuries on her and issued the accident register extract, Ex.P-19. The statement of P.W.18 regarding the complaint made by D1 and D2, particularly the reason for injuries on them has not been diluted in the cross-examination. On the other hand, P.W.18's statement regarding how D1 and D2 sustained injuries and Exs.P-18 and P-19, accident register extracts support the case of prosecution. In other words, even at the earliest point of time, when D1 and D2 were admitted in the hospital for treatment, it was informed by them to P.W.18 doctor that the accused was responsible for the injuries on them.

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16. Another important evidence on the side of prosecution is P.W.19. According to him, when he was functioning as Assistant Professor, KMC, Hospital, on 22.9.1999 at about 11.45 p.m., Tamilarasi (D1) aged about 21 years was taken to the hospital. He deposed before the Court that D1 herself stated that she sustained burn injuries due to pouring of petrol on her. It was P.W.19 who treated her. In spite of the treatment, she died at 4.00 p.m. on 2.10.1999. P.W.19 opined that her death was due to the burn injuries. He issued the death certificate, Ex.P-20. He also stated before the Court that at the same time and date, Manonmani (D2) aged about 45 years was admitted with 45% burn injuries. She also informed P.W.19 that the injuries were caused by her son-in-law. P.W.19 has specifically stated that the said information was furnished by D2 herself, however, she died at about 5.45 a.m. on 23.9.1999. The death certificate pertaining to D2 is Ex.P-21. There is no reason to disbelieve the version of P.W.19.

17. P.W.21, Head Constable, H-5 Police Station in his evidence has stated that when he was in the Police Station, at about 11.00 p.m. on 22.9.1999, he received a telephonic message to the effect that two women were set on fire near Government Press Quarters and both of them were taken to K.M.C. Hospital. According to him, he informed the same to the higher authorities and he accompanied the Sub Inspector of Police, P.W.23 to K.M.C.Hospital where the Sub Inspector of Police recorded the statement given by D1. On enquiry with P.W.19 doctor, Sundaravadanam, he came to know that D2 was not in a position to give any statement .

18. P.W.22, Dr.C.Manoharan who conducted autopsy on the dead bodies of D1 and D2 has opined that the death was due to burn injuries. Ex.P-22 is the post-mortem certificate in respect of D1 and Ex.P-23 is the post-mortem certificate in respect of D2. The evidence of P.W.22 and Exs.P-22 and P-23 make it clear that D1 and D2 died due to burn injuries.

19. The Sub-Inspector of Police, H5, New Washwermanpet Police Station, by name R.Kannan, who registered the first information report was examined as P.W.23. According to him, around 1.00 a.m. 22/23.9.1999, he received a telephonic message from K.M.C. Hospital informing that D1 and D2 were admitted with burn injuries. He immediately went along with P.W.21, Head Constable to K.M.C. Hospital. When he went to the Ward, he came to know that D2 Manonmani was unconscious and D1 Tamilarasi was conscious. With the help of P.W.19, Dr.Sundaravadanam, who was in-charge of the Ward, P.W.23 recorded statement from D1. He also stated that the statement was explained to D1 and after showing the same to the doctor P.W.19, the same was registered as complaint in Crime No.691/99 of H5 Police Station for the offence under section 307 IPC. Ex.P-24 is the statement / complaint given by D1 received regarding the above case. P.W.23 sent intimation to the Inspector of Police and prepared printed F.I.R., Ex.P25.

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20. P.W.24, Inspector of Police in his evidence has stated that based on the intimation given by P.W.23, he rushed to K.M.C. Hospital and obtained statement from D1 who was conscious. It was he who prepared mahazar and collected all the material objects and sent requisition to forward the same for chemical analysis.

21. The entire prosecution case rests on the statements of D1 and D2 recorded immediately after they were admitted in the hospital and the dying declaration of D1, Tamilarasi which was recorded at 10.30 hours on 23.9.1999. Ex.P-5 the dying declaration of D1 goes to show that on the requisition given by the Sub-Inspector of Police, H5 Police Station at 10 hours, the Judicial Magistrate, P.W.12 proceeded to K.M.C. Hospital and saw the injured with burn injuries. The Duty Medical Officer, opined that Tamilarasi (D1) was fit and conscious to give statement. P.W.12 put several questions to ascertain that D1 was in a position to understand and answer the questions. P.W.12 after satisfying himself based on the statement of the Duty Medical Officer that D1 was conscious, recorded her statement, Ex.P-5. She (D1) made the following statement regarding injuries found on her:

" நேற்று இரவு 11 மணிக்கு சம்பவம் நடந்திச்சி. அதற்கு முன்ப காலையில் என் கணவர் பாபு, சண்டை போட்டு என் தாலியையும், குழந்தையையும் கேட்டார். தரமாட்டேன்னு சொன்னேன். என் கணவர் தண்ணீ போடுவார். கஞ்சா அடிப்பார். ராத்திரி 11 மணிக்கு பெட்ரோல் கொண்டு வந்து என் மேலும் என் அம்மா மேலேயும் ஊற்றினார். தீக்குச்சி வைத்து பொரித்து போட்டு விட்டு ஓடிவிட்டார். எனக்கும் என் அம்மாவுக்கும் தீக்காயம் ஏற்பட்டிச்சி.

ஒம்/ ,
தமிழரசி "

Ex.P-5 also contains the certificate of the Judicial Magistrate P.W.12 to the effect that,

> "Certified that the victim injured Tamilarasi's statements were recorded by me and admitted by her to be correct. "

The proceedings of the learned Judicial Magistrate satisfied the mandatory provisions of section 164(4) Cr.P.C. Apart from the certificate, the Duty Medical Officer also certified that,

> "23.9.99.
> 10.45 A.M. Patient was conscious oriented & fit to give statement. "

22. The analysis of Ex.P-5 makes it clear that D1, when she was conscious, made dying declaration to the effect that her husband had quarrelled with her in the morning of the fateful day and demanded her Thali (sacred thread) and when D1 refused to part with Thali, the accused challenged that he would kill her. Her statement further shows

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that he used to take Ganja also. She further contends that on the same day, her husband came with petrol can at about 11.00 p.m. and pored on her and her mother and threw a lighted match stick and ran away due to which herself and her mother sustained burn injuries. It contains the certificate - a mandatory requirement issued by the Metropolitan Magistrate who recorded the statement. It also contains the statement of Duty Medical Officer to the effect that at the relevant time D1 was conscious and fit to give the statement. Inasmuch as Ex.P-5 satisfies all the statutory requirements, there is no reason to disbelieve the same. We have already referred the statement of Metropolitan Magistrate, P.W.12, the evidence of P.W.19 and the evidence of post-mortem Doctor P.W.22.

23. Learned counsel for the appellant has submitted that there is no reason to get the impression of left big toe in Exs.P-18 and P-19, accident register extracts. However, it is seen from Exs.P-18 and P-19 that D1 and D2 sustained burn injuries on the hands including left thumb. In such a circumstance, there cannot be any comment in getting the impression of left big toe in Exs.P-18 and P-19.

24. Learned counsel for the appellant also contended that there is no clear evidence to the effect that who brought D1 and D2 to the Hospital, whether P.W.6 Ravi or someone else. Even assuming that there is discrepancy and the real man who brought them to the Hospital was not examined, in the light of the dying declaration which was recorded in accordance with the procedure implicating the accused that he poured petrol and threw a lighted match stick on them, we are of the view that the minor discrepancy pointed out by the learned counsel for the appellant would not affect the case of prosecution.

25. The decision of the Supreme Court in the case of Muthu Kutty and another vs. State by Inspector of Police, Tamil Nadu reported in 2005(1) SBR 133, relied on by the learned Additional Public Prosecutor makes it clear that if the Court is satisfied that the dying declaration is true and voluntary, it can order conviction based on the dying declaration without any corroboration.

26. Learned counsel for the appellant contended that the doctor in whose presence the dying declaration was recorded and who endorsed the dying declaration was not examined and hence, the evidentiary value of the dying declaration is highly doubtful. We are unable to accept the said contention. It is useful to refer the judgement in the case of Shanmugam vs. State of Tamil Nadu [(2003) 2 SCC (Crl.) 1501] wherein their Lordships held that the mere fact that the doctor in whose presence the dying declaration was recorded and who also endorsed the dying declaration was not examined does not affect the evidentiary value of the dying declaration. In the light of the decision of the Supreme Court, though the doctor V.Usha, who made endorsement in Ex.P-5 to the effect that D1 was conscious and fit to give the statement was not examined, that would not affect the evidentiary value of the dying declaration, i.e., Ex.P.5.

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27. In the light of the legal position that the dying declaration can form the sole basis for conviction, the decision of the Division Bench of Delhi High Court reported in State vs. Sunil Kumar Mandal (2003) (4) Crimes 316) relied on by the learned counsel for the appellant is not applicable to the case on hand.

In the light of our discussion, we are satisfied that the prosecution has established the guilt of the accused beyond all reasonable doubts and the learned Additional Sessions Judge (FTC-2), Chennai is right in convicting the accused under section 302 IPC and sentencing him to undergo life imprisonment (2 counts). Inasmuch as due to the barbaric act on the part of the accused, two persons, namely, his wife and mother-in-law died in a single incident, we are of the view that stringent punishment should be awarded and the life sentence as well as fine of Rs.5,000/- imposed on him is perfectly correct and no interference is warranted and we find no merit in the appeal. Accordingly, the appeal fails and the same is dismissed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional Sessions Judgement
   Fast Track Court No.2, Chennai.

2. The Additional Sessions Judgement
   Fast Track Court No.2, Chennai.
   (through) The Principal Sessions Judge Chennai.

3. The Inspector of Police
   R.5 New Washermenpet Police Station, Chennai.

4. The Superintendent, Central Prison, Vellore.

5. The Public Prosecutor, High Court, Chennai.

6. The District Collector, Chennai.

7. The Director General of Police, Mylapore, Chennai 600 004.

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